

LITIGATION ROSTER

SALES AND USE TAX

MARCH 2011

**Sales and Use Tax  
March 2011**

**NEW CASES**

Case Name

Court/Case Number

Daniel, Hubert

Stanislaus Superior Court 658605

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**CLOSED CASES**

Case Name

Court/Case Number

Aspect Software Inc.

San Francisco Superior Court CGC 07-468134

Please refer to the case roster for more detail regarding new and closed cases

## SALES AND USE TAX

### LITIGATION ROSTER

March 2011

#### **ALAMEDA, CITY OF, et al. v. The California State Board of Equalization**

San Francisco Superior Court Case No. CPF-09-509234

Filed –04/21/09

*Plaintiff's Counsel*

Charles Coleman

Holland & Knight, LP

*BOE's Counsel*

Kris Whitten

*BOE Attorney*

John Waid

Issue(s): Whether BOE's characterization of transactions where the property sold is shipped to California customers from points out of state and the retailer has a business operation in Alameda as being subject to use tax is valid.

Audit/Tax Period: 1995 - Present

Amount: Unspecified

Status: The parties have stipulated and filed a motion to assign the *City of Alameda v. BOE*, *City of Brisbane v. BOE*, and the *City of South San Francisco v. BOE* to a single judge for all purposes. Pre-trial conference date is June 23, 2011. Trial is continued to October 17, 2011.

#### **ALHAMBRA, CITY OF, et al. v. California State Board of Equalization**

Los Angeles Superior Court Case No. BS124978

Filed – 02/19/10

*Plaintiff's Counsel*

Richard R. Terzian, Mark J. Mulkerin

Burke, Williams & Sorensen, LLP

*BOE's Counsel*

Marta Smith

*BOE Attorney*

John Waid

Issue(s): Whether BOE's reallocation of local sales tax away from the Los Angeles county-wide pool and directly to the City of Pomona for the period 1994-2009 violates public policy, due process, the statute of limitations, and the consistent and uniform administration of the law as required by [Revenue and Taxation Code sections 7221](#) et seq.

Audit/Tax Period:

Amount: Unspecified

Status: At the hearing on April 8, 2010, the court granted petitioners' motions. The court ordered that BOE's administrative decision issued January 15, 2010 is stayed pending the judgment of the court, filing of a notice of appeal from the judgment, or until the expiration of the time for filing such notice of appeal, whichever occurs first.

The court consolidated the following cases for all purposes: *City of Palmdale v. BOE* (LASC Case No. BS124919), *City of Los Angeles v. BOE* (LASC Case No. BS124950), and *City of Alhambra v. BOE* (LASC Case No. BS124978). *City of Palmdale* is designated as the lead case.

Plaintiffs' petition for writ of mandate was granted. Judgment entered March 9, 2011. Status conference is set for June 2, 2011.

**BRISBANE, CITY OF v. The California State Board of Equalization**

San Francisco Superior Court Case No. CPF-09-509232

Filed –04/21/09

BOE's Counsel

Kris Whitten

BOE Attorney

John Waid

Plaintiff's Counsel

Charles Coleman

Holland &amp; Knight, LP

Issue(s): Whether BOE's characterization of transactions where the property sold is shipped to California customers from points out of state and the retailer has a business operation in Brisbane as being subject to use tax is valid.

Audit/Tax Period: 2001 - PresentAmount: Unspecified

Status: The parties have stipulated and filed a motion to assign the *City of Alameda v. BOE*, *City of Brisbane v. BOE*, and the *City of South San Francisco v. BOE* to a single judge for all purposes. Pre-trial conference is set for June 23, 2011. Trial is continued to October 17, 2011.

**CIGARETTES CHEAPER!, et al. v. State Board of Equalization, et al.**

United States District Court, Eastern Dist. CA, No. 2:11-CV-00631-JAM-EFB

Filed – 01/18/11

BOE's Counsel

Jane O'Donnell

BOE Attorney

Wendy Vierra

Plaintiff's Counsel

William S. Bernheim

Bernheim, Gutierrez &amp; McCready

Issue(s): Whether plaintiffs, retailers of cigarettes, are entitled to a refund of sales taxes paid on rebates plaintiffs received from various cigarette manufacturers under Volume Price Reduction Agreements (VPR).

Audit/Tax Period: UnstatedAmount: Unspecified

Status: BOE's Demurrer was filed on March 7, 2011. On March 8, 2011, defendant Philip Morris USA Inc. filed a Notice to State Court of Removal to the United States District Court, Eastern District of California. Hearing on Philip Morris' Motion to Dismiss is set for March 18, 2011.

**DANIEL, HUBERT v. State Board of Equalization, et al.**

Stanislaus County Superior Court Case No. 658605

Filed – 10/01/10

BOE's Counsel

James Phillips

BOE Attorney

Greg Day

Plaintiff's Counsel

Hubert Daniel

In Pro Per

Issue(s): Whether or not plaintiff had exhausted administrative remedies before filing the action in the court, as required by [Revenue and Taxation Code section 6932](#) and [Government Code sections 900](#) et seq., [905](#) et seq., [910](#) et seq., and [915](#) et seq. BOE contends that an administrative appeal has not yet completed, so plaintiff is not entitled to seek judicial action.

Audit/Tax Period: NoneAmount: Unspecified

Status: Hearing on BOE's Motion to Change Venue is scheduled for May 17, 2011.

**D.R. SYSTEMS, INC. v. State of California; State Board of Equalization**

San Diego County Superior Court Case No. 37-2009-00094087

Plaintiff's Counsel

Scott Savary  
Savary, APC

Filed –

BOE's Counsel

Leslie Branman Smith  
BOE Attorney  
Renee Carter

Issue(s): Did plaintiff file a timely Claim for Refund for self-help credits subsequently disallowed during an audit by the BOE's Sales & Use Tax Department?

Audit/Tax Period: 04/01/02 – 12/31/05

Amount: \$283,410.00

Status: Hearing on parties' motions for summary judgment and or summary adjudication are scheduled for May 13, 2011. Trial is set for June 13, 2011.

**FILLMORE, CITY OF v. California State Board of Equalization**

San Francisco Superior Court Case No. CPF-09-509234

Court of Appeal, Second Appellate District No. B219483

Plaintiff's Counsel

Jeffrey S. Baird, Joseph A. Vinatieri  
Bewley, Lassleben & Miller, LLP

Filed – 05/26/09

BOE's Counsel

Stephen Lew  
BOE Attorney  
John Waid

Issue(s): Whether [Revenue & Taxation Code section 7056](#) requires that consultants contracting with cities regarding local sales tax allocation must be authorized by resolution to represent the city and must meet certain criteria, including that they may not also represent retailers.

Audit/Tax Period: None

Amount: Unspecified

Status: Judgment dismissing Fillmore's Petition for Writ of Mandate, and Intervenor's Petition and Complaint was entered August 13, 2009. Intervenor, City of Industry and City of Livermore, filed Notices of Appeal on October 1, 2009. Fillmore's Cross Appeal was filed on October 30, 2009, and dismissed on April 9, 2010, at Fillmore's request. At oral argument on December 9, 2010, the Court requested further briefing, due on February 7, 2011. This case stands submitted as of February 23, 2011.

**HOFSTADTER, DAVID, et al. v. The State Board of Equalization**

(Class Action Complaint for Constructive Trust, etc.)

Los Angeles Superior Court Case No. BC376547

Plaintiffs' Counsel

Mitch Kalcheim  
Kalcheim/Salah

Filed – 08/24/07

BOE's Counsel

Bonnie Holcomb  
BOE Attorney  
John Waid

Issue(s): Whether Dell properly collected use tax from its customers measured by the amount of a mail-in rebate on the sales ([Revenue and Taxation Code 6011](#); [Regulation 1671](#)).

Audit/Tax Period: None

Amount: Unspecified

Status: Telephonic status conference continued to July 14, 2011.

**INTAGLIO CORPORATION v. State Board of Equalization**

Sacramento Superior Court Case No. 05AS02558

*Plaintiff's Counsel*

R. Todd Luoma

Law Offices of Richard Todd Luoma

Filed – 06/13/05

*BOE's Counsel*

Steven J. Green

*BOE Attorney*

Jeffrey Graybill

Issue(s): Whether plaintiff can exempt from tax its charges for special printing aids ([Regulation 1541](#)).

Audit/Tax Period: 04/01/97-12/31/00

Amount: \$208,513.38

Status: Pending trial setting.

**ISTRIN, JONATHAN v. Ralphs Grocery Company, California State Board of Equalization**

(Class Action Complaint for Constructive Trust, etc.)

San Francisco Superior Court Case No. CPF-09-509234

*Plaintiff's Counsel*

Jordan L. Lurie, Joel E. Elkins

Weiss & Lurie

Filed – 03/20/09

*BOE's Counsel*

Elisa Wolfe-Donato

*BOE Attorney*

John Waid

Issue(s): Plaintiff contends that Ralphs improperly collected sales tax reimbursement on sales of hot coffee to go. Plaintiff seeks an injunction against Ralphs. Plaintiff also seeks an order that Ralphs institute a system to accurately track tax on sales of hot coffee to go and to make refund applications to BOE, and an injunction ordering BOE to act on Ralphs' refund applications and to deposit moneys already collected with the court. BOE contends that the court lacks jurisdiction of this case because plaintiff lacks standing to bring a suit to adjudicate a sales tax dispute. Plaintiff may not use remedies not authorized by the Legislature.

Audit/Tax Period: None

Amount: Unspecified

Status: The court granted BOE's and Ralphs' Demurrers with 30 days leave to amend. Plaintiff's First Amended Complaint was filed on March 3, 2010. Stipulation for Stay pending the results in *Loeffler* was filed on June 2, 2010.

**LOS ANGELES, CITY OF, et al. v. California State Board of Equalization**

Los Angeles Superior Court Case No. BS124950

*Plaintiff's Counsel*

Carmen Trutanich, Pejmon Shemtoob

Office of the Los Angeles City Attorney

Filed – 02/16/10

*BOE's Counsel*

Marta Smith

*BOE Attorney*

John Waid

Issue(s): Whether BOE's reallocation of local sales tax away from the Los Angeles county-wide pool and directly to the City of Pomona for the period 1994-2009 violates public policy, due process, the statute of limitations, and the consistent and uniform administration of the law as required by [Revenue and Taxation Code sections 7221](#) et seq.

Audit/Tax Period:

Amount: Unspecified

Status: At the hearing on April 8, 2010, the court granted petitioners' motions. The court ordered that BOE's administrative decision issued January 15, 2010 is stayed pending the judgment of the court, filing of a notice of appeal from the judgment, or until the expiration of the time for filing such notice of appeal, whichever occurs first.

The court consolidated the following cases for all purposes: *City of Palmdale v. BOE* (LASC Case No. BS124919), *City of Los Angeles v. BOE* (LASC Case No. BS124950), and *City of Alhambra v. BOE* (LASC Case No. BS124978). *City of Palmdale* is designated as the lead case.

Plaintiffs' petition for writ of mandate was granted. Judgment entered March 9, 2011. Status conference is set for June 2, 2011.

**LUCENT TECHNOLOGIES, INC. I, et al. v. State Board of Equalization of the State of California**

Los Angeles Superior Court Case No. BC402036

Filed – 11/14/08

BOE's Counsel

Ronald Ito

BOE Attorney

Jeffrey Graybill

Plaintiff's Counsel

Jeffrey G. Varga

Paul, Hastings, Janofsky & Walker LLP

Issue(s): (1) Does the sale of software qualify for technology transfer agreement treatment; (2) have the plaintiffs established that the engineering and support charges are related to sales of tangible personal property; and (3) did plaintiffs use the prior agreement to calculate their tax liability for the subject quarter. (Revenue and Taxation Code sections [6012](#) and [6010.9](#); Regulations [1502](#) and [1507](#).)

Audit/Tax Period: 1/1/95 - 12/31/99

Amount: \$3,480,913.12

Status: On December 21, 2010, the court issued its order consolidating *Lucent Technologies, Inc. v. BOE* (Lucent I), LASC Case No. BC402036, and *Lucent Technologies, Inc. v. BOE* (Lucent II), LASC Case No. BC448715. Lucent I is designated the lead case. The final settlement conference and trial dates were vacated. Trial setting conference is set for May 4, 2011.

**LUCENT TECHNOLOGIES, INC. II v. State Board of Equalization of the State of California**

Los Angeles Superior Court Case No. BC448715

Filed – 11/02/2010

BOE's Counsel

Stephen Lew

BOE Attorney

Jeffrey Graybill

Plaintiff's Counsel

Jeffrey G. Varga, Julian Decyk

Paul, Hastings, Janofsky & Walker LLP

Issue(s): Does the sale of software qualify for technology transfer agreement treatment. (Revenue and Taxation Code sections [6012](#) and [6010.9](#); Regulations [1502](#) and [1507](#).)

Audit/Tax Period: 2/1/96 – 9/30/00

Amount: \$276,832,998.67

Status: On December 21, 2010, the court issued its order consolidating *Lucent Technologies, Inc. v. BOE* (Lucent I), LASC Case No. BC402036, and *Lucent Technologies, Inc. v. BOE* (Lucent II), LASC Case No. BC448715. Lucent I is designated the lead case. The final settlement conference and trial dates were vacated. Trial setting conference is set for May 4, 2011.

**McCLAIN, MICHAEL, et al. v. Sav-On Drugs, et al.**

**Cross Complaint: Albertson's Inc, et al. v. The California State Board of Equalization**

Los Angeles Superior Court Case No. BC325272

Filed – 02/24/06

BOE's Counsel

Bonnie Holcomb

BOE Attorney

John Waid

Plaintiffs' Counsel

Philip J. Eskanazi, Lee A. Cirsch

Akin, Gump, Strauss, Haur & Feld LLP

Issue(s): Whether sales tax reimbursement was illegally being collected on the sale of glucose test strips and skin puncture lancets which were exempt from sales tax ([Regulation 1591.1](#)).

Audit/Tax Period: None

Amount: Unspecified

Status: By order dated November 17, 2007, the trial court ruled in favor of defendants Sav-on Drugs, et al., that sales tax was properly applied to these transactions. Further issues not involving the BOE are still pending. Hearing on Walgreen's Motion for Summary Judgment continued to April 25, 2011.

**McCLAIN, MICHAEL, et al. v. Sav-On Drugs, et al.**

**Cross-Complaint: CVS, Inc. v. California State Board of Equalization**

Los Angeles Superior Court Case No. BC325272

Filed – 01/24/06

BOE's Counsel

Bonnie Holcomb

BOE Attorney

John Waid

Plaintiffs' Counsel

Richard T. Williams

Holland & Knight LLP

Issue(s): Whether sales tax reimbursement was illegally being collected on the sale of glucose test strips and skin puncture lancets which were exempt from sales tax ([Regulation 1591.1](#)).

Audit/Tax Period: None

Amount: Unspecified

Status: By order dated November 17, 2007, the trial court ruled in favor of defendants Sav-on Drugs, et al., that sales tax was properly applied to these transactions. Further issues not involving the BOE are still pending. Hearing on Walgreen's Motion for Summary Judgment continued to April 25, 2011.



**McCLAIN, MICHAEL, et al. v. Sav-On Drugs, et al.**

**Cross-Complaint: Longs Drug Stores Corporation, et al. v. California State Board of Equalization**

Los Angeles Superior Court Case No. BC325272

Filed – 01/24/06

BOE's Counsel

Bonnie Holcomb

BOE Attorney

John Waid

Plaintiffs' Counsel

Douglas A. Winthrop, Christopher Kao

Howard, Rice, Nemerovski, Canady, Falk & Rabkin

Issue(s): Whether sales tax reimbursement was illegally being collected on the sale of glucose test strips and skin puncture lancets which were exempt from sales tax ([Regulation 1591.1](#)).

Audit/Tax Period: None

Amount: Unspecified

Status: By order dated November 17, 2007, the trial court ruled in favor of defendants Sav-on Drugs, et al., that sales tax was properly applied to these transactions. Further issues not involving the BOE are still pending. Hearing on Walgreen's Motion for Summary Judgment continued to April 25, 2011.

**McCLAIN, MICHAEL, et al. v. Sav-On Drugs, et al.**

**Cross-Complaint: Rite Aid v. The California State Board of Equalization**

Los Angeles Superior Court Case No. BC325272

Filed – 01/24/06

BOE's Counsel

Bonnie Holcomb

BOE Attorney

John Waid

Plaintiffs' Counsel

Douglas C. Rawles

ReedSmith LLP

Issue(s): Whether sales tax reimbursement was illegally being collected on the sale of glucose test strips and skin puncture lancets which were exempt from sales tax ([Regulation 1591.1](#)).

Audit/Tax Period: None

Amount: Unspecified

Status: By order dated November 17, 2007, the trial court ruled in favor of defendants Sav-on Drugs, et al., that sales tax was properly applied to these transactions. Further issues not involving the BOE are still pending. Hearing on Walgreen's Motion for Summary Judgment continued to April 25, 2011.

**McCLAIN, MICHAEL, et al. v. Sav-On Drugs, et al.**

**Cross-Complaint: Wal-Mart Stores, Inc. v. The California State Board of Equalization**

Los Angeles Superior Court Case No. BC325272

Filed – 02/24/06

BOE's Counsel

Bonnie Holcomb

BOE Attorney

John Waid

Plaintiffs' Counsel

Gail E. Lees, Brian Walters

Gibson, Dunn & Crutcher LLP

Issue(s): Whether sales tax reimbursement was illegally being collected on the sale of glucose test strips and skin puncture lancets which were exempt from sales tax ([Regulation 1591.1](#)).

Audit/Tax Period: None

Amount: Unspecified

Status: By order dated November 17, 2007, the trial court ruled in favor of defendants Sav-on Drugs, et al., that sales tax was properly applied to these transactions. Further issues not involving the BOE are still pending. Hearing on Walgreen's Motion for Summary Judgment continued to April 25, 2011.

**McCLAIN, MICHAEL, et al. v. Sav-On Drugs, et al.**

**Cross-Complaint: Walgreen Co. v. The California State Board of Equalization**

Los Angeles Superior Court Case No. BC325272

Plaintiffs' Counsel

Douglas C. Rawles

ReedSmith LLP

Filed – 02/24/06

BOE's Counsel

Bonnie Holcomb

BOE Attorney

John Waid

Issue(s): Whether sales tax reimbursement was illegally being collected on the sale of glucose test strips and skin puncture lancets which were exempt from sales tax ([Regulation 1591.1](#)).

Audit/Tax Period: None

Amount: Unspecified

Status: By order dated November 17, 2007, the trial court ruled in favor of defendants Sav-on Drugs, et al., that sales tax was properly applied to these transactions. Further issues not involving the BOE are still pending. Hearing on Walgreen's Motion for Summary Judgment continued to April 25, 2011.

**MOHAN, DIANE, et al. v. Dell, Inc., et al.**

San Francisco Superior Court Case No. CGC 03-419192

Plaintiffs' Counsel

Jason Bergmann

Paul, Hastings, Janofsky & Walker, LLP

Filed – 11/01/04

BOE's Counsel

Anne Michelle Burr

BOE Attorney

John Waid

Issue(s): Whether Dell illegally collected use tax measured by the price of optional service contracts even though the contracts were not separately stated on the invoice ([Revenue and Taxation Code 6011](#); [Regulations 1546 and 1655](#)).

Audit/Tax Period: None

Amount: Unspecified

Status: The trial court ruled that the service contracts were in fact optional and that the Dell entities should not have collected tax on their sales. Dell took up a writ of mandate on this issue to the First District Court of Appeal. In a published decision, the appeals court agreed with the trial judge. (*Dell, Inc. v. Sup. Ct.* (2008) 159 Cal.App.4th 911.) Plaintiffs' Unfair Competition Law claims are still pending.

The court continued the Case Management/Settlement Conference to June 3, 2011.

**NORTEL NETWORKS INC. I v. State Board of Equalization of the State of California**

Los Angeles Superior Court Case No. BC341568

Court of Appeal, Second Appellate District No. B213415

California Supreme Court No. S190946

Plaintiff's Counsel

Jeffrey Varga, Julian Decyk

Paul, Hastings, Janofsky & Walker LLP

Filed – 10/17/05

BOE's Counsel

Stephen Lew

BOE Attorney

Mike Llewellyn

Issue(s): 1) Whether [Regulation 1507](#) is valid, 2) whether the software sold by Nortel is prewritten, and 3) whether the software sales agreements technology transferred agreements.

Audit/Tax Period: 01/01/94-12/31/97 (audit); 01/01/96-06/30/01 (refund) Amount: \$36,520,136.70

Status: On January 18, 2011, the Court of Appeal issued its opinion affirming the trial court's judgment that found Nortel's sales of switching software qualified as technology transfer agreements, and reversing the trial court's judgment which held valid that portion of Regulation 1507 stating that a technology transfer agreement does not mean an agreement for the sale of prewritten software. On February 3, 2011, the Second District Court of Appeal denied BOE's Petition for Rehearing. On February 25, 2011, BOE filed a Petition for Review with the California Supreme Court.

**NORTEL NETWORKS INC. II v. State Board of Equalization of the State of California**

Los Angeles Superior Court Case No. BC375660

Filed – 08/09/07

BOE's Counsel

Lew/Wolfe-Donato

BOE Attorney

Mike Llewellyn

Plaintiff's Counsel

Jeffrey G. Varga

Paul, Hastings, Janofsky & Walker LLP

Issue(s): Whether the engineering services rendered by Nortel were part of the sale of tangible personal property under [Revenue and Taxation Code sections 6011\(c\)\(10\) and 6012\(c\)\(10\)](#).

Audit/Tax Period: 01/01/94-12/31/97

Amount: \$1,054,020.00

Status: The case went to trial on the first cause of action, which included claims relating to charges by Nortel for systems application engineering and equipment application engineering charges. The remaining causes of action for different charges were bifurcated and stayed, pending the results of the judgment in the Nortel I case. Nortel prevailed on its claims at trial, and the court has entered a statement of decision on such claims. With the remaining claims stayed, the case will remain in this status until it either settles or until resolution of the Nortel I appeal.

**PALMDALE, CITY OF, et al. v. State of California, Board of Equalization**

Los Angeles Superior Court Case No. BS124919

Filed – 02/16/10

BOE's Counsel

Marta Smith

BOE Attorney

John Waid

Plaintiff's Counsel

Mitchell E. Abbott, Veronica S. Gunderson

Richards, Watson & Gershon

Issue(s): Whether BOE's reallocation of local sales tax away from the Los Angeles county-wide pool and directly to the City of Pomona for the period 1994-2009 violates public policy, due process, the statute of limitations, and the consistent and uniform administration of the law as required by [Revenue and Taxation Code sections 7221](#) et seq.

Audit/Tax Period:

Amount: Unspecified

Status: At the hearing on April 8, 2010, the court granted petitioners' motions. The court ordered that BOE's administrative decision issued January 15, 2010 is stayed pending the judgment of the court, filing of a

notice of appeal from the judgment, or until the expiration of the time for filing such notice of appeal, whichever occurs first.

The court consolidated the following cases for all purposes: *City of Palmdale v. BOE* (LASC Case No. BS124919), *City of Los Angeles v. BOE* (LASC Case No. BS124950), and *City of Alhambra v. BOE* (LASC Case No. BS124978). *City of Palmdale* is designated as the lead case.

Plaintiffs' petition for writ of mandate was granted. Judgment entered March 9, 2011. Status conference is set for June 2, 2011.

**SONOMURA, AKIRA v. State Board of Equalization**

San Diego Superior Court Case No. 37-2007-00074759-CU-MC-CTL

Filed – 05/30/08

BOE's Counsel

Leslie Smith

BOE Attorney

John Waid

Plaintiff's Counsel

Bob Mullen

Attorney at Law

Issue(s): (1) Whether BOE's issuance of a Notice of Determination pursuant to [Revenue and Taxation Code section 6829](#) was proper; and (2) whether BOE's Notice of Determination was timely ([Revenue and Taxation Code section 6487](#)).

Audit/Tax Period: 04/01/1993 – 03/31/1996 (dual 04/25/2002)

Amount: \$79,000.00

Status: BOE's Answer was filed July 8, 2008. BOE is conducting discovery.

**SOUTH SAN FRANCISCO, CITY OF v. California State Board of Equalization, et al.**

San Francisco Superior Court Case No. CPF-09-509231

Filed – 02/20/09

BOE's Counsel

Kris Whitten

BOE Attorney

John Waid

Plaintiff's Counsel

Peter S. Hayes

Meyers, Nave, Roback, Silver & Wilson

Issue(s): Whether BOE's characterization of transactions where the property sold is shipped to California customers from points out of state and the retailer has a business operation in South San Francisco as being subject to use tax is valid.

Audit/Tax Period: 1996 - Present

Amount: Unspecified

Status: The parties have stipulated and filed a motion to assign the *City of Alameda v. BOE*, *City of Brisbane v. BOE*, and the *City of South San Francisco v. BOE* to a single judge for all purposes. Pre-trial conference is set for June 23, 2011. Trial is continued to October 17, 2011.

**TESTOUT CORPORATION v. State Board of Equalization**

Los Angeles Superior Court Case No. BC442139

Filed – 07/22/2010

BOE's Counsel

Elisa Wolfe

BOE Attorney

Wendy Vierra

Plaintiff's Counsel

Jonathan G. Fetterly

Holme Roberts &amp; Owen LLP

Issue(s): Is plaintiff, an out-of-state retailer, entitled to a refund of use taxes it collected on sales it made to its California customers and submitted to the BOE during the period it held a use tax registration with the Board? (Sales and Use Tax Regulation [1684\(c\)](#).)

Audit/Tax Period: 1/1/03 – 12/31/05Amount: \$105,602.00

Status: Plaintiff's amended complaint is due April 8, 2011. Status conference is set for July 7, 2011.

**UNIVERSAL CITY STUDIOS LLLP v. State Board of Equalization of the State of California**

San Francisco Superior Court Case No. CGC-10-498151

Filed – 03/26/10

BOE's Counsel

David Lew

BOE Attorney

Jeffrey Graybill

Plaintiff's Counsel

Jeffrey M. Vesely, Richard E. Nielsen

Pillsbury Winthrop Shaw Pittman LLP

Issue(s): Whether plaintiff self reported the proper amount of taxable sales related to its lump sum charges for access to its theme park attractions and meals and beverages ([Sales and Use Tax Regulation 1603](#).)

Audit/Tax Period: 7/1/96 - 4/30/02Amount: \$461,282.12

Status: BOE's Answer was filed May 17, 2010. Mandatory Settlement Conference continued to May 6, 2011. Trial date continued to May 23, 2011.

**WOOSLEY, CHARLES PATRICK v. State Board of Equalization**

Los Angeles Superior Court Case No. CA000499

Filed – 06/20/78

Court of Appeal, Second Appellate District: B113661

BOE's Counsel

Diane Spencer-Shaw

BOE Attorney

Sharon Brady Silva

Plaintiff's Counsel

James M. Gansinger

Gansinger, Hinshaw

Issue(s): Whether the taxpayer is entitled to a refund of the vehicle license fee ([Revenue and Taxation Code sections 10753 and 10758](#)) and use tax imposed.

Audit/Tax Period: NoneAmount: \$1,492.00

Status: On July 21, 2010, the California Supreme Court denied Woosley's Petition for Review. As no further appeals may be taken from the appellate decision, the case will be remanded to the trial court to make further determinations in accordance with the appellate court's decision. Remittitur issued August 3, 2010. Hearing set for July 7, 2011.

**SALES & USE TAX**  
**CLOSED CASES**  
**LITIGATION ROSTER**  
March 2011

**ASPECT SOFTWARE, INC. v. State Board of Equalization**

San Francisco Superior Court Case No. CGC 07-468134

Court of Appeal, First Appellate District No. A127004

*Plaintiff's Counsel*

James P. Kleier

ReedSmith LLP

Filed –10/12/07

*BOE's Counsel*

Joyce Hee

*BOE Attorney*

Jeffrey Graybill

Issue(s): Whether tax applies to plaintiff's charges for what it alleges were intangible software license fees, and whether the charges should be excluded from tax as sales made pursuant to technology transfer agreements ([Regulation 1502.](#))

Audit/Tax Period: 10/01/00-12/31/00

Amount: \$804,778.84

Disposition: Order Granting BOE's Motion for Summary Judgment was entered June 17, 2009. Plaintiff dismissed its appeal. On March 8, 2011, the Court dismissed this case and issued its remittitur.

**DISCLAIMER**

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